

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TRUDY TURNER

**v.
LARRY PENCE, ET AL.**

RESPONDENT,

APPELLANTS.

DOCKET NUMBER WD79661

DATE: March 28, 2017

Appeal From:

Dekalb County Circuit Court
The Honorable Thomas N. Chapman, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Troy L. Dietrich, Cameron, MO, for respondent.

Michael A. Insco, St. Joseph, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TRUDY TURNER,

APPELLANT/RESPONDENT,

v.

LARRY PENCE, ET AL.,

RESPONDENT/APPELLANT.

No. WD79661

Dekalb County

Before Division Three: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

Larry Pence ("Larry") and Roland Pence ("Roland") (collectively, the "Appellants") appeal from the Amended Findings of Fact, Conclusions of Law and Interlocutory Judgment in Partition of the Circuit Court of DeKalb County ("the Judgment"). The trial court ordered that certain real estate and personal property be sold at a partition sale and, after payment of expenses, that the proceeds be divided among the parties. Appellants' claim that they were entitled to a substantially greater share of the proceeds based upon their contribution to the property based on years of work on the property. The trial court denied most of this claim. The Appellants raise five points on appeal, challenging the trial court's Judgment with respect to the denial of their claims for equitable liens against the property.

The Appellant are brothers, who along with their two sisters inherited three farms from their mother. The two brothers had worked on the farms for many years both before and following the death of their mother. The Appellants claimed they were entitled to equitable liens against the real property for the value of their work on the farms. They claimed a lien in the sum of over \$500,000. The trial court awarded them a claim of \$26,998.24 for improvements to the property after the death of their mother and the creation of the joint tenancy with their sisters. The trial court also offset that claim by the sum of \$21,256.75 which was the rental value of the property after the creation of the joint tenancy with their sisters but during which the sisters did not receive any benefits from the property.

WE AFFIRM

Division Three holds:

(1) The trial court did not err in finding that the Appellants did not contribute to the purchase of the real property as that finding is supported by the evidence and not against the weight of the evidence.

(2) The trial court did not err in finding that the Appellants failed to establish essential elements to support their claim for an equitable lien as there was no evidence there existed a duty

or obligation owed by one person to another and no evidence of an intent, express or implied, that the property would serve as security for the payment of the debt or obligation.

(3) As the trial court found the Appellants could not establish essential elements to support their claim for an equitable lien, it is unnecessary for the Court to decide whether the contributions provided by the Appellants were gratuitous in nature, although there was evidence in the record to support such a conclusion.

(4) The trial court did not err in finding that the Appellants failed to meet their burden to support their claim for reimbursement for various contribution categories as the finding by the trial court that the contributions did not increase the property's value is supported by the evidence and not against the weight of the evidence.

(5) The trial court did not err by refusing to take into account contributions and improvements prior to the death of the Appellants' mother and the creation of the co-tenancy when setting the reasonable rental value of the property.

(6) Turner's motion seeking the reimbursement of attorneys' fees in bringing this appeal, pursuant to section 528.530 and Rule 96.30, is denied as she has failed to show either that the Appellants' actions in this appeal were vexatious or that the work of her attorney on appeal has benefited the Appellants in any way.

Opinion by Gary D. Witt, Judge

March 28, 2017

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